

## **REMARKS**

Claims 1-39 were examined. Applicant has amended claims 1, 30 and 39 and added claims 40-42. No claims are cancelled. No new matter has been introduced.

Support for the amendment added to claims 1, 30 and 39 can be found in paragraph [0237] of the instant specification.

Support for the newly added claims can be found at least in paragraphs [0218], [0219] and [0224] of the instant specification.

Applicants thank the Examiner for withdrawal of the rejection under 35 USC §112 and the double patenting rejection.

### **Rejections under 35 USC §102**

Claims 1-11, 14-24, 26-29, 31-39 stand rejected under §102(b) as being anticipated by Knowlton (6,350,276). The Examiner maintains that "Knowlton [276 patent] clearly include pre-positioning for example in the background of the invention liposuction is used prior to the treatment which constitutes pre-positioning. Additionally, it is inherent to pre-position the patient so as to access the treatment area which also constitutes pre-positioning." (page 2 of the instant Final Office Action).

Applicants reiterate that one skilled in the art would not confuse the removal of tissue, as occurs with liposuction, with the repositioning of tissue, as in the instant application, in order to shape a thermal lesion and create or facilitate a directed wound healing response. Moreover, one skilled in the art would not confuse pre-positioning of a patient with the more specific and local manipulation of a target tissue "to shape the thermal lesion so as to create or facilitate the creation of a directed wound healing response". (Paragraph [0237] of the instant specification). With respect to the inherency of "pre-positioning", as asserted by the Examiner, Applicants submit that "pre-positioning" is not an inherently necessary step of the tissue remodeling process. Further, nowhere in the '276 patent is there disclosure for a pre-positioning step.

One skilled in the art would understand that the "pre-positioning of the tissue" in the instantly claimed method involves a local target tissue site being held in a very specific orientation or position prior to the application of energy to induce thermal

adhesions or lesions and producing collagen contraction and/or wound healing within the tissue site that produces a desired amount of local tissue remodeling. To this end, the instant specification discloses that "a number of surgical techniques can be employed, including but not limited to, pre-positioning the selected tissue by hand, suturing the tissue in place, using a steri strip, using a surgical/tissue adhesive, or using a surgical clamping device known in the art."

During the telephonic interview on October 28, 2008, the Examiner alleged that the conforming template and the application of mechanical compression disclosed in the '276 patent would constitute a "pre-positioning of tissue".

Applicants respectfully disagree and submit that the method and apparatus disclosed in US Patent 6,350,276, using a conforming template combined with mechanical compression, does not adequately secure the repositioned skin in place or sufficiently produce a desired amount of tissue remodeling. In support of this position, Applicants submit herewith a Declaration by Dr. Edward Knowlton affirming as such. It Dr. Knowlton's further opinion that the claimed methods of the instant application constitute a novel advancement in the field of tissue remodeling and one skilled in the art would not agree that the instant application is anticipated or made obvious by the disclosure in US Patent 6,350,276.

Further, without acquiescing to the Examiner's assertions and merely to expedite prosecution of the instant application, Applicants herewith submit amendments to independent claims 1, 30 and 39 to more clearly state what Applicants have always considered to be within the scope of the invention. That is, the description of pre-positioning tissue at the tissue into an aesthetically corrected confirmation has been amended to indicate that pre-positioning of the selected tissues is used to shape a thermal lesion so as to create or facilitate the creation of a directed wound healing response; wherein vectored pre-positioning of the selected tissues is accomplished using surgical techniques, including but not limited to, pre-positioning the selected tissue by hand, suturing the tissue in place, using a steri strip, using a surgical/tissue adhesive, or using a surgical clamping device known in the art.

Accordingly, withdrawal of the rejection of Claims 1-11, 14-24, 26-29, 31-39 under 35 U.S.C. §102(b) is respectfully requested.

### **Rejections under 35 USC §103**

Claims 12-13, 25 and 30 stand rejected under §102(a) as anticipated by or, in the alternative, under §103(a) as obvious over Knowlton.

Applicants maintain, for the reasons above and previously made of record in the Response of September 18, 2007, that Knowlton does not disclose each and every limitation of Claims 1 or 30, or those claims dependent thereupon, because Knowlton does not disclose pre-positioning of tissue to shape a thermal lesion. Accordingly, since the instant claims are not anticipated nor obvious over Knowlton, Applicants respectfully request withdrawal of the present rejection.

Accordingly, withdrawal of the rejection of Claims 12-13, 25 and 30 under 35 U.S.C. §103(a) is respectfully requested.

### **CONCLUSION**

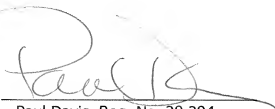
Applicant believes that the application is in condition for allowance. The Commissioner is authorized to charge Deposit Account 50-4634 for any payment due in connection with this paper, including petition fees and extension of time fees.

Respectfully submitted,

Date: \_\_\_\_\_

12-15-08

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